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**AUG 10 2009**

**OFFICE OF PETITIONS**

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In re Application of :  
Meinherz, et al. :  
Application No. 09/890,098 : **ON PETITION**  
Filed: July 27, 2001 :  
Attorney Docket No. 2000P04015 :

This is a decision on the petition to revive under 37 CFR 1.137(a),  
filed June 12, 2008.

The petition under 37 CFR 1.137(a) is **GRANTED**.

The above-identified application became abandoned for failure to reply  
to the non-final Office action mailed October 8, 2002. This Office  
action set a shortened statutory period for reply of three (3) months.  
No reply having been received, the application became abandoned on  
January 9, 2003. A Notice of Abandonment was mailed on June 20, 2003.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1)  
the required reply, unless previously filed; (2) the petition fee as  
set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the  
Commissioner that the entire delay in filing the required reply from  
the due date for the reply until the filing of a grantable petition  
pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal  
disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant  
to 37 CFR 1.137(d). Decisions on reviving abandoned applications on  
the basis of "unavoidable" delay have adopted the reasonably prudent  
person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human  
affairs, and requires no more or greater care or diligence

than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.<sup>1</sup>

Moreover, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable."<sup>2</sup>

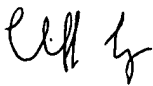
Petitioner has established that the October 8, 2003 Office action was not received at the prior attorney / correspondence address of record. In view thereof, it is concluded that petitioner has met his burden of establishing that the delay was unavoidable.

While petitioner has not submitted the required reply in the form of a response to the October 8, 2003 Office action, this requirement is being waived *sua sponte* by the Office.

The fee for a petition to revive under 37 CFR 1.137(a) is \$540. Petitioner submitted \$200. Accordingly, \$340 has been charged to Deposit Account No. 12-1099, as authorized.

The application is being forwarded to Group Art Unit 2832 for preparation of a new first Office action.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo  
Petitions Attorney  
Office of Petitions

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<sup>1</sup> In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

<sup>2</sup> Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).